

# MANAGEMENT MEMO

SUBJECT: RESTRICTIONS REGARDING USE OF CMAS, MASTER SERVICES AGREEMENTS, AND NON-COMPETITIVELY BID CONTRACTS DURING INTERIM REVIEW PERIOD <b>AMENDMENTS TO COMPETITIVELY BID CONTRACTS; MODIFICATIONS TO ATTACHMENTS A &amp; B AND D</b>	NUMBER: <b>MM 02-12, ADDENDUM #2</b>
REFERENCES:  <b>EXECUTIVE ORDER D-55-02</b>	DATE ISSUED: <b>AUGUST 9, 2002</b>  EXPIRES: <b>UNTIL RESCINDED</b>
	ISSUING AGENCY: <b>DEPARTMENT OF GENERAL SERVICES</b>

**CHANGES/MODIFICATIONS TO THIS MANAGEMENT MEMO AS A RESULT OF THIS ADDENDUM #2 ARE EFFECTIVE AS PROVIDED HEREIN. CHANGES ARE INDICATED IN BOLD.**

It is the intent of Executive Order D-55-02 that competitive bidding processes will be employed to the maximum extent required by law. The purpose of this Management Memo is to provide Interim Guidelines for the acquisition of goods and services obtained through the use of CMAS, Master Services Agreements, and Non-Competitively Bid acquisition methods during the review period established by Executive Order D-55-02. Separate standards and processes are required for contracts \$100,000 or less and those greater than \$100,000. These are designated as Attachments A, B, and C, attached hereto. Attachment B and Attachment C were modified in Addendum 1 *and are completely revised herein; categorizing by program and then by dollar threshold; Attachment D was added in Addendum 1 and is further modified herein to add Health Insurance Portability and Accountability Act (HIPAA) MSA guidelines to be effective August 20, 2002; California Integrated Information Network (CIIN) amendment guidelines, as well as instructions on how to amend a contract which had been previously competitively bid.* Additionally, certain monetary thresholds have been increased effective August 20, 2002.

1. Each State Agency and each department/commission/board not under an Agency shall designate a Procurement Liaison who will be responsible for the implementation of these Interim Guidelines. The name, telephone number and e-mail address of such person shall be transmitted to the Department of General Services (DGS) Procurement Division (custserv@dgs.ca.gov) by 5:00 p.m. June 4, 2002. Any follow-up instructions regarding these Interim Guidelines will be disseminated through the designated Procurement Liaison and through the DGS Procurement Division website. (See #11 below)
2. Failure to comply with the restrictions and/or requirements of these Interim Guidelines will result in the loss of delegated purchasing privileges.
3. Contracts should not be executed, and/or work should not be commenced until all of the approvals required by this Management Memo and Attachments have been obtained.
4. Contracts currently exempt from competitive bidding by statute (e.g. Interagency agreements, etc.) or which are based on purchases from a competitively bid master contract (e.g. Commodities master contracts, security guards, etc.) are not subject to this Management Memo and shall be entered into according to current legally required procedures. Contracting for architectural and engineering services, which is based on a statutorily required competitive selection process, is exempt from this Executive Order.

5. Although all Constitutional Officers, the University of California, the California State University, the Lottery Commission, the Public Employees' Retirement System, the State Teachers' Retirement System, the State Compensation Insurance Fund, and other independent state entities are exempt from this Executive Order, they are encouraged to take all necessary actions to comply with the intent of the Order. Contracts by local government entities are exempt from Executive Order D-55-02, but remain subject to their own laws or procedures.
6.
  - a. Application of the Interim Guidelines to amendments of existing non-competitively bid contracts will be based on the cumulative dollar value after including the amendment. (e.g. \$40,000 base contract plus a \$70,000 amendment would be considered a \$110,000 contract.)
  - b. Application of the Interim Guidelines shall apply to a previously competitively bid contract when the awarded contract is to be amended to increase the monetary value of the contract and such increase was not considered during the original evaluation process. Application of the Interim Guidelines to such amendments shall be based on the cumulative value after including the amendment, (e.g., \$40,000 competitively bid/awarded contract plus a \$70,000 amendment shall be considered a \$110,000 contract subject to the Interim Guidelines).
7. Purchases and contracts not addressed by this Management Memo will be subject to the Department of General Services' oversight and must be processed in accordance with existing statutory requirements as well as applicable Procurement Division Delegation requirements and/or the State Contracting Manual.
8. Unless competitively bid, purchases greater than \$100,000 involving contracts subject to Executive Order D-55-02, in addition to all other legally applicable requirements shall be justified by one of the following criteria:
  - a. Provision of essential services
  - b. Required for public health or safety
  - c. Emergency as defined in Public Contract Code 1102
  - d. Necessary to avoid financial loss to the state

These terms are further defined in Attachment C.

9. Order of precedence: In applying these Interim Guidelines, the precedence shall be applied in the following order:
  - a. Executive Order D-55-02.
  - b. Management Memo 02-12, Addendum #2, including Attachments A, B, C and D.
  - c. Management Memo 02-12, Addendum #1, including Attachments A, B, C and D.
  - d. Management Memo 02-12, including Attachments A, B and C.
  - e. Procurement Division Delegation for information technology and commodities.
  - f. State Contracting Manual (Non-IT services).

Copies of these documents are available on the Procurement Division website. (see # 11 below)

10. These Interim Guidelines are subject to future revision as determined by DGS with the approval of the Department of Finance.

11. Additional information regarding this Management Memo will be published on the Procurement Division website ([www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd)) as it becomes available. (Select "Executive Order D-55-02".) Of particular interest will be the FAQ (Frequently Asked Questions) section, which will address common inquiries regarding the application of the Executive Order and Interim Guidelines.

Questions regarding this Management Memo may be directed to:

IT Goods & Services, Commodities:

Marnell Voss, Manager  
Business Development Unit  
Department of General Services  
Procurement Division  
Telephone: (916) 375-4563  
e-mail: [marnell.voss@dgs.ca.gov](mailto:marnell.voss@dgs.ca.gov)

Non-IT Services:

Kathleen A. Yates, Senior Staff Counsel  
Department of General Services  
Office of Legal Services  
Telephone: (916) 376-5115  
e-mail: [Kathleen.Yates@dgs.ca.gov](mailto:Kathleen.Yates@dgs.ca.gov)

**Original Signed By Clothilde V. Hewlett, Interim Director**

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Clothilde V. Hewlett, Interim Director  
Department of General Services

# Dollar Thresholds -- What To Do -- Attachment A

CMAS and Master Agreements			
	IT Goods and Services*	Non-IT Services*	Non-IT Goods*
\$ 500,000	Limited to \$500,000, no exemptions		
\$ 250,000		Limited to \$250,000, no exemptions	
> \$100,000a	<p>1. Solicit a minimum of 3 offers including one small business (if available). If &lt; 3 offers are received, documentation of solicitation methods must be included with contract reporting to DGS. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see chart below.</p> <p>2. Must comply with EO paragraph 6 conditions and MM 02-12, Addendum 1, attachment C-3).</p> <p>3. All orders must be reported to DGS within 5 working days using the Notice of Contract Award form.</p> <p>4. Variance of model contract terms allowed only with DGS approval.</p> <p>5. For Master contracts, existing lower dollar limits established by actual agreements may further reduce this maximum.</p> <p>6. IF GS \$SMART is utilized for financing, DGS-PD approval required before award.</p> <p>Approval by Agency Secretary and Department Director or immediate next ranking official; see MM 02-12, Addendum 1, attach C-2) and C-3)</p>	<p>1. Solicit a minimum of 3 offers including one small business (if available). If &lt; 3 offers are received, documentation of solicitation methods must be included with contract reporting to DGS. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see chart below.</p> <p>2. Must comply with EO paragraph 6 conditions and MM 02-12, Addendum 1, attachment C-3)</p> <p>3. All orders must be reported to DGS within 5 working days using the Notice of Contract Award (NCA) form. Send CMAS NCA's to DGS-PD and Master NCA's to DGS-OLS.</p> <p>4. Variance of model contract terms allowed only with DGS approval</p> <p>Approval by Agency Secretary and Department Director or immediate next ranking official; see MM 02-12, Addendum 1, attach C-2) and C-3)</p>	<p>1. Approvals do not apply to competitively bid master commodities contracts.</p> <p>2. Competitively bid master commodities contracts are exempt from EO D-55-02.</p> <p>3. IF GS \$SMART is utilized for financing, DGS-PD approval required before award.</p>
\$ 100,000a			Limited to \$ 100,000a, no exemptions
< \$ 100,000a	<p>Solicit a minimum of 3 offers including one small business (if available). If &lt; 3 offers are received, documentation of solicitation methods must be included with contract reporting to DGS. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see chart below.</p> <p>2. Variance of model contract terms allowed only with DGS approval.</p>	<p>1. Solicit a minimum of 3 offers including one small business (if available). If &lt; 3 offers are received, documentation of solicitation methods must be included with contract reporting to DGS. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see chart below.</p> <p>2. Variance of model contract terms allowed only with DGS approval.</p>	<p>1. Solicit a minimum of 3 offers including one small business (if available). If &lt; 3 offers are received, documentation of solicitation methods must be included with contract reporting to DGS. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed, see chart below.</p> <p>2. Variance of model contract terms allowed only with DGS approval.</p>
> \$ 35,000b		<p>1. DGS/PD review and approval required.</p> <p>2. Master Agreements, DGS/OLS review and approval for contract orders.</p>	

\*Evaluation/award may be awarded on the basis of best value, not restricted to lowest cost.

a This amount shall increase to \$250,000 effective August 20, 2002.

b This amount shall increase to \$50,000 effective August 20, 2002.

- Transactions with start dates prior to Dept of Finance approval dates must be approved by DGS-PD however, once approved, the user Department can execute the Purchase Order and follow the Notice of Contract Award process.

# Dollar Thresholds -- What To Do -- Attachment B

Non-Competitively Bid (NCB) Contracts *			
	IT Goods and Services	Non-IT Services	Non-IT Goods
> \$100,000a	1) Emergency 2) Only source (PCC 12102) Must also comply with Executive Order Paragraph 6 criteria; see MM 02-12, Addendum 1, Attachment C-3).	Complies with PCC 10340. Must also comply with Executive Order Paragraph 6 criteria; see MM 02-12, Addendum 1, Attachment C-3).	1) Emergency 2) Only source (PCC 10301,10302) Must also comply with Executive Order Paragraph 6 criteria; see MM 02-12, Addendum 1, Attachment C-3).
	Approval by Department Director AND Agency Secretary or immediate next ranking official for each (no delegation) and; Approval by DOF is also required. (Notes 1 and 2)	Approval by Department Director AND Agency Secretary or immediate next ranking official for each (no delegation) and Approval by DOF is also required. (Notes 1 and 2)	Approval by Department Director AND Agency Secretary or immediate next ranking official (no delegation) and; Approval by DOF is also required. (Notes 1 and 2)
< \$ 100,000a	Note 1, See MM 02-12, Addendum 1 Attachment C-1) for approval authority. Attach the Notice of Contract Award Report for signature by the Department and Agency.  Note 2, All Non-Competitively Bid Contract requests should be submitted to DGS-PD. If services, attach a Std. 821. DGS-PD will transmit those over \$100,000a to DOF for review and approval.	Note 1, See MM 02-12, Addendum 1 Attachment C-1) for approval authority. Attach the Notice of Contract Award Report for signature by the Department and Agency.  Note 2, All Non-Competitively Bid Contract requests should be submitted to DGS-PD. If services, attach a Std. 821. DGS-PD will transmit those over \$100,000a to DOF for review and approval.	Note 1, See MM 02-12, Addendum 1 Attachment C-1) for approval authority. Attach the Notice of Contract Award Report for signature by the Department and Agency.  Note 2, All Non-Competitively Bid Contract requests should be submitted to DGS-PD. If services, attach a Std. 821. DGS-PD will transmit those over \$100,000a to DOF for review and approval.
> \$ 25,000	1) Emergency 2) Only source (PCC 12102)	Complies with PCC 10340.	1) Emergency 2) Only source (PCC 10301,10302)
	Approval by Department Director AND Agency Secretary or immediate next ranking official for each (no delegation; see Attachment C-1) and C-2)	Approval by Department Director and Agency Secretary or immediate next ranking official for each (no delegation; see Attachment C-1) and C-2)	Approval by Department Director AND Agency Secretary or immediate next ranking official for each (no delegation; see Attachment C-1) and C-2)
> \$ 5,000	Approval by DGS		Approval by DGS
< \$ 100	No NCB required with delegated purchasing authority. Approval by DGS for departments without delegated purchasing authority.	Approval by DGS	No NCB required with delegated purchasing authority. Approval by DGS for departments without delegated purchasing authority.
			Departmental approval. Delegation authority begins at < \$100.

- \* Non-Competitively Bid Contracts (NCB's) >\$500K may reference C/MAS/Master terms and conditions but can only be awarded by DGS.  
a This amount shall increase to \$250,000 effective August 20, 2002

**ATTACHMENT C**

**Procedures and Definitions regarding Executive Order D-55-02  
Addendum #2**

- 1) Required approvals for non-competitively bid contracts \$100,000\* or less and those CMAS, MSA and CAL-Store contracts and non-competitively bids greater than \$100,000\* shall be limited to the following persons:
  - a) Agency Secretaries or their immediate next ranking official, or
  - b) For departments or other entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.
- 2) Required approvals for CMAS and Master Agreement contracts exceeding \$100,000\* shall be limited to the following persons:
  - a) Department Director or their immediate next ranking official, or
  - b) For departments or other entities not reporting to a Department Director, approval authority is limited to the highest two ranking executive officials; **AND**
  - c) Agency Secretaries or their immediate next ranking official, or
  - d) For departments or other entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.
- 3) Paragraph #6 of the Executive Order applies additional qualifying criteria in addition to those that are statutorily required. Approval of contracts exceeding \$100,000\*, as covered by the Executive Order, must contain documentation of facts that support the existence of any of the applicable criteria.
- 4) Definitions of Paragraph #6 criteria:
  - a) Essential services:  
Includes services determined to be critically necessary for the operation of the department or the delivery of services required to be provided by the department.

b) Required for Health and Safety:

Goods or services determined as necessary to preserve, protect or promote public health, including persons under the care or custody of the state; or necessary to preserve, protect or promote public safety.

c) Emergency (Public Contract Code 1102):

A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, property or essential public service.

(Note: In the event of an emergency, statute permits the immediate acquisition of necessary goods and services as needed, with necessary approvals and documentation to follow.)

d) Avoidance of financial loss to the state:

Goods and services necessary, as determined, to prevent the waste of state funds or resources, including but not limited to:

1. Failure to obtain will result in the loss of federal or other funding.
2. Failure to obtain will result in damage to or deterioration of state resources.
3. Failure to obtain will result in the interruption of essential state operations or programs.
4. Failure to obtain could expose the state to liability based on the risk of damage to the property of others.
5. Failure to obtain could expose the state to risk based on the harm to the public.
6. Failure to obtain could result in the imposition of additional payments, penalties or fines.

5) Definition of terms used in Attachments A and B.

MSA: Master service agreement

MPA: Master purchase agreement

MRA: Master rental agreement

SPS: State Price Schedule

WSCA: Western States Contracting Alliance

Cal-Store: Cal-Store Master Purchase Agreement

\*This amount shall increase to \$250,000 effective August 20, 2002.

**ATTACHMENT D**  
**(August 9, 2002)**

The following contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. The categories are either exempt by statute, or based on a determination by DGS that competitive bidding is not feasible (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80).

Emergency contracts which are necessary for the immediate preservation of life or state property. Contracts issued as a result of an emergency may be entered into immediately without completion of the required paperwork for the processes required herein. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements of the Management Memo.

- a. Contracts for the work or services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency.
- b. Services for which the state has entered into a master service agreement; Note: This is limited to those master contracts which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered. See the DGS Procurement web page at [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd) for a list of *approved* exempt contracts.
- c. Subvention contracts (non-discretionary grants) with a private or nonprofit entity for the purpose of providing services to the public or segments thereof. This exception applies only when services are being provided to the public and not specifically to a state agency, and where the department budget specifies that the funds are for subvention purposes.
- d. Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services. . Note: This exception applies only in circumstances where services to be provided are less than \$100,000\*; for services in excess of this amount, the guidelines regarding non-competitive bid contracts for \$100,000\* or more apply.



- e. Refuse and/or sewage disposal contracts where there is no competition because they are the authorized franchise dealers providing services to a specific geographical area.
- f. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), and 911 *emergency ambulance service calls*;
- g. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.
- h. Proprietary software maintenance *and/or upgrades* contracts. Note: This applies only to the maintenance *and/or upgrades* of existing proprietary software up to \$100,000\* and only in circumstances where a competitive bid is not feasible. For software maintenance and/or upgrades of \$100,000\* or more, *approval of the Department Director (only), DGS and the Department of Finance is required*. For acquisitions of new proprietary software over \$5,000 where a competitive bid is not feasible, or where maintenance *and/or upgrades* of existing proprietary software will exceed \$100,000\* the guidelines for non-competitive bid contracts apply. *This last statement applies only to departments holding an information technology delegation from DGS/PD – if the department does not hold an information technology delegation from DGS/PD, then the guidelines for non-competitive bid contracts apply for all acquisitions*.
- i. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered. Note: Shall not exceed \$5,000.
- j. Public entertainment contracts for state-sponsored fairs and expositions.
- k. Contracts solely for the purpose of obtaining expert witnesses for litigation.
- l. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff.
- m. Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to Government Code 19130a.

- n. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption extend beyond six months.
- o. *Amendments to existing contracts which were originally competitively bid subject to the following restrictions:*
1. *Competitively bid contracts for both information technology and non-information technology, which were evaluated and awarded with options to extend for time or time and money may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the bid process.*
  2. *Competitively bid contracts for non-information technology services which do not include options to extend may be amended as follows:*
    - *Exemption shall only apply to the first amendment.*
    - *Amendment shall add time only, not to exceed one year, and/or add not more than 30% of the original contract value, not to exceed \$100,000\*.*
    - *The original contract must have permitted the amendment.*
- p. Contracts for conference or meeting facilities, including room accommodations for conference attendees. Note: This exception applies only in circumstances where facilities to be provided are less than \$100,000\*; for facilities exceeding this amount, the guidelines regarding non-competitive bid contracts for \$100,000\* or more apply.
- q. *\*\*Contracts for services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the restrictions imposed by the Executive Order and Management Memo subject to compliance with the following requirements and limitations:*
- *Agencies must prepare their Statement of Work (SOW).*
  - *Office of HIPAA Implementation (OHI) reviews and approves all SOWs to ensure the agency complied with their HIPAA work plan.*
  - *Agencies must solicit all HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.*
  - *Contracts/amendments providing for contract value >\$50,000 for non-IT services are subject to review and approval by DGS.*
  - *Contracts/amendments providing for contract value between \$500,000 - \$5 million for non-IT services are reviewed by OHI and approved by DGS.*
  - *Contracts/amendments providing for contract value between \$500,000 - \$5 million for IT services are reviewed by OHI and approved by DGS.*

- ***Contracts/amendments providing for contract value > \$5 million are reviewed by OHI and DGS and approved by the Department of Finance.***
- r. ***Amendments to the California Integrated Information Network (CIIN) Agreement (CNT-001) to add products and services defined as mandatory per Management Memo 97-01 and DOIT Directive 1999-01. These mandatory services are defined as Lineside, Voice Network, Data Services, and Billing Services.***
- s. ***\*\*The CAL-Store agreement is added to the Contracts Exempt from Management Memo 02-12 list provided on the DGS-PD web site, [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd).***
- \* ***This amount shall increase to \$250,000 effective August 20, 2002.***
- \*\* ***This shall take effect August 20, 2002.***

**Miscellaneous:**

**In determining whether the acquisitions of a particular agency/department/entity are exempt from the Executive Order (see Management Memo 02-12, paragraph No. 5) the funding source for the acquisition shall be determinative, notwithstanding the fact that DGS may be the procuring entity.**